

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COLUMBIA GAS TRANSMISSION, LLC,)
Plaintiff,)
v.) Civil Action No.:
0.12 ACRES OF LAND, MORE OR)
LESS, IN WASHINGTON COUNTY,)
MARYLAND; STATE OF MARYLAND,)
DEPARTMENT OF NATURAL RESOURCES,)
Defendants.)

**PLAINTIFF'S MOTION FOR EXPEDITED HEARING ON ITS MOTION
FOR AN ORDER OF CONDEMNATION AND FOR PRELIMINARY INJUNCTION**

Plaintiff Columbia Gas Transmission, LLC (“**Columbia**”), pursuant to Federal Rule of Civil Procedure 6(c)(1)(C), respectfully requests that this Court set an expedited hearing on Columbia’s Motion for an Order of Condemnation and for Preliminary Injunction. In support of this Motion, Columbia states as follows:

On May 16, 2019, Columbia filed its Complaint in Condemnation (“**Complaint**”), seeking an order of condemnation for the easement, right-of-way, and other necessary property interests more particularly depicted and described in **Exhibit B** to the Complaint (the “**Easement**”), and the ascertainment and award of just compensation and damages properly attributable to Columbia’s acquisition of the Easement.

Contemporaneously therewith, Columbia filed its Motion for an Order of Condemnation and for Preliminary Injunction (along with a Declaration in Support), and its Memorandum in Support of its Motion for an Order of Condemnation and for Preliminary Injunction (collectively referred to as the “**preliminary injunction moving papers**”), which are incorporated by reference

herein, seeking an order of condemnation and a preliminary injunction granting Columbia immediate access to and use of the Easement.

As is discussed in Columbia's preliminary injunction moving papers, the Federal Energy Regulatory Commission ("FERC") granted Columbia a certificate of public convenience and necessity (the "**Certificate**") in FERC Docket No. CP17-80-000 on July 19, 2018. The FERC Certificate approves the construction and operation of approximately 3.37 miles of 8-inch diameter natural gas pipeline, known as Columbia's Eastern Panhandle Expansion Project (the "**Project**"). The subject pipeline will commence at interconnections with Columbia's Line 1804 and Line 10240 in Fulton County, Pennsylvania and extend through Washington County, Maryland, to a point of delivery with the local distribution system of Mountaineer Gas Company, the project shipper, in Morgan County, West Virginia. The Project will provide up to 47,500 dekatherms per day (Dth/d) of incremental firm transportation service to serve markets in West Virginia, in addition to serving multiple communities by increasing supply options and enabling the safe and reliable transport of natural gas, and the Easement will be used to that end.

As a matter of law, Columbia is authorized to condemn the Easement, which is necessary for the construction and operation of Columbia's Project. Columbia began its Easement-acquisition efforts in 2016, and those efforts have included, among other things, making direct contact with representatives of the State of Maryland, Department of Natural Resources ("**MDNR**," the "**Defendant**"), which is the record title holder of the Tract, through telephone calls, personal meetings, and/or written correspondence to discuss the Project and the related Easement rights sought by Columbia, submitting requested documents and information to MDNR, and negotiating both the terms of acquisition and the form of the easement agreement with MDNR. Most recently, Columbia offered MDNR consideration for the Easement in the amount of

\$5,000.00, an amount in excess of the compensation due as determined by the appraisal conducted by an independent appraiser licensed in the State of Maryland to determine the compensation due by reason of the imposition of the Easement. Thereafter, negotiated and agreed-upon terms of a proposed easement agreement were reached, the execution of which would have obviated the need for these proceedings.

On information and belief, formal conveyance of the Easement rights pursuant to the negotiated and agreed-upon terms and form of the easement agreement requires approval by the Maryland Board of Public Works (“BPW”). After more than two years of effort by Columbia, the matter of approval of the conveyance of the Easement was placed on the agenda for the January 2, 2019 BPW meeting, at which Columbia’s easement application was denied. Columbia, accordingly, has been unable to acquire the Easement by agreement despite its exhaustive efforts to do so.

Columbia has satisfied the jurisdictional prerequisites under applicable law and has complied with the applicable requirements of Federal Rule of Civil Procedure 71.1.

As is discussed more fully in Columbia’s preliminary injunction moving papers, Columbia is without an adequate legal remedy, as it will suffer irreparable harm including, without limitation, delay and substantial expense if not allowed immediate access to and use of the Easement. The Project, as approved, contemplates an approximately 4,294-foot HDD to pass beneath multiple tracts of real property, including the Tract, and there are significant construction activities for the Project as a whole. Without immediate access to and use of the Easement, Columbia would likely not be able to employ the linear construction method for the Project that is dictated by industry standard practices. The use of any non-linear construction method is extremely inefficient, vastly

more costly, and, often, renders it infeasible to construct the pipeline or perform the HDD work that is required by the FERC Certificate.

Additionally, FERC requires that, among other things, Columbia adhere to the construction procedures as submitted to FERC in the approval process, as well as comply with the Environmental Conditions listed in the appendix to the FERC Certificate, all of which currently provide for the completion of construction and making the proposed facilities available for service by the July 19, 2020 Certificate Expiry Date. Due to a combination of permit restrictions, tree and vegetation clearing restrictions, stream crossing restrictions, and practical limitations associated with performing the necessary work at issue during the winter months, the HDD work must be performed between June 15th and March 1st. Accordingly, to meet its Certificate Expiry Date, Columbia must commence the HDD by no later than November 4, 2019.

It is anticipated that the HDD work will take approximately 60 to 75 days to complete. Furthermore, given the nature of the HDD work, and the high demand for the specialized contractors who perform it, Columbia must give its HDD contractor not less than three months of advance notice of mobilization or risk the very real possibility that the contractors will not be available at the designated time. Notice to mobilize cannot be given unless and until Columbia has the right to make use of the Easement as, among other things, Columbia would owe its HDD contractor delay damages of \$25,000 per day for each day the Right-of-Way was not available after notice is given.

Moreover, the practical realities associated with the scarcity of available specialized contractors and resources will become even more extreme as the calendar advances through 2019 and into 2020. The pipeline industry faces a veritable “perfect storm” from a project construction perspective in 2019-2020, a period during which there are not only an unprecedented number of

large pipeline projects coming on line for construction, but projects which are clustered geographically in Appalachia and in the central/eastern portion of the United States – greatly taxing the limited pool of specialized contractors and resources.

As established in the preceding paragraphs, critical strategic planning is required to schedule and coordinate the performance of the significant construction activities along the Project Route. And while the HDD process requires significant coordinating and scheduling on its own, the particular work to be done on this Tract requires even more rigorous coordination because, among other things, the HDD must pass below the Potomac River—a highly-complex crossing that is unique to the tract on which this Easement is located. Any uncertainty regarding access to and use of the Easement, as well as any other deviations from the construction and project-management schedules, will prevent the HDD from commencing and the Project’s construction schedule will be substantially and materially impaired. Accordingly, immediate access to and use of the Easement is necessary to ensure that Columbia can complete construction, comply with its obligations, and make the proposed facilities available for service by the FERC deadline, and there is good cause to order an expedited hearing on Columbia’s Motion for an Order of Condemnation and for Preliminary Injunction under the circumstances.

WHEREFORE, Columbia prays that this Court enter an order setting an expedited hearing on Columbia’s Motion for an Order of Condemnation and for Preliminary Injunction, and provide for such other and further relief as the Court deems just and proper under the circumstances.

Dated: May 16, 2019

Respectfully submitted,

By:

/s/
Alan M. Rifkin (MD Bar No. 11562)
Barry L. Gogel (MD Bar No. 25495)
Rifkin Weiner Livingston, LLC
225 Duke of Gloucester Street
Annapolis, Maryland 21401
T: 410.269.5066
F: 410.269.1235
arifkin@rwllaw.com
bgogel@rwllaw.com

John Haug (to be admitted pro hac vice)
David Fedder (to be admitted pro hac vice)
Michael Harriss (to be admitted pro hac vice)
Dentons US LLP
211 N. Broadway Suite 3000
St. Louis, MO 63102
T: 314.259.1800
F: 314.259.5959
john.haug@dentons.com
david.fedder@dentons.com
michael.harriss@dentons.com

*Attorneys for Plaintiff Columbia Gas Transmission,
LLC*

109895901